

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,

Plaintiff,

vs.

D. GOTTLIEB & CO., a corporation, and
WILLIAMS ELECTRONICS, INC., a corpor-
ation, and ROCKWELL INTERNATIONAL
CORPORATION, a corporation,

Defendants.

DOCKETED. NOV 10 1980

UNITED STATES DISTRICT COURT

CLERK'S OFFICE

No. 78C 2246

BE IT REMEMBERED that, pursuant to subpena and on
Tuesday, September 16, 1980, commencing at the hour of 10:10
A.M., at 2600 El Camino Real, Palo Alto, California, before
me, WAYNE WALCOFF, a Certified Shorthand Reporter, License
No. 4382, and Notary Public in and for the County of San
Mateo, State of California, personally appeared

MANUEL R. LEMAS

who was called as a witness by plaintiff.

OBUJEN & MCCUTCHEON
OFFICIAL REPORTERS & NOTARIES

2555 PARK BOULEVARD

PALO ALTO, CALIFORNIA 94306

I N D E X

<u>Examination By</u>	<u>Witness</u>	<u>Address</u>	<u>Page</u>
Mr. Welsh	W. H. T. Tamm, Esq.	100 N. LaSalle Street	3
Further	W. H. T. Tamm, Esq.	100 N. LaSalle Street	63
Mr. Harding	W. H. T. Tamm, Esq.	100 N. LaSalle Street	62

A P P E A R A N C E S

For plaintiff
Bally Manufacturing: FITCH, EVEN, TABIN, FLANNERY
& WELSH, ESQS.
BY: DONALD L. WELSH, ESQ. and
JEROLD B. SCHNAYER, ESQ. and
A. SIDNEY KATZ, ESQ.
135 South LaSalle Street
Suite 900
Chicago, Illinois 60603

For defendant
Williams Electronics: MCDOUGALL, HERSH & SCOTT, ESQS.
BY: WILLIAM T. RIFKIN, ESQ.
135 South LaSalle Street
Chicago, Illinois 60603

For defendants ARNOLD, WHITE & DURKEE, ESQS.
D. Gottlieb & Co. and BY: WAYNE M. HARDING, ESQ.
Rockwell International: 2100 Transco Tower
Houston, Texas 77056

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MANUEL R. LEMAS

having first been duly sworn by the Notary

Public to tell the truth, the whole truth,

and nothing but the truth, was thereupon

examined and testified as follows: The cases of the

EXAMINATION BY MR. WELSH

MR. WELSH: Is this Q. 1? Would you state your full name?

THE WITNESS: to A. Manuel Raymond Lemass. Eustard

Q. 2a Did you receive a subpoena to appear here today? and

that A. Yes, I did. position is to this case on a s

other MR. WELSH: as we'd like the reporter to mark this copy

of this subpoena with the return of service on it as Lemas

Deposition Exhibit 1. As far as I can determine, it is not being taken on the 7/3/71 (Whereupon a copy of the subpoena of Manuel Lemas was marked Plaintiff's agreement between the parties Exhibit Lemas - 1 for identification.)

Now, perhaps you'll educate me if my understanding is not correct.

MR. WELSH: Q. Are you represented here today by

By agreement between the parties, I take

THE WITNESS: ~~RESCUE~~ A. No, I am not. On the one hand and

MR. WELSH: Mr. Ritkin, whom are you representing?

MR. RIFKIN: Williams Electronics.

MR. WELSH: MR. HARDING, whom are you representing?

MR. HARDING: ... I'm representing my usual clients, Mr. ...

Weish: Who are you representing here today?

MR. WELSH: We are representing Barry, the plaintiff.

By John Green —

1 MR. WELSH: Q. Let the record show that there does
2 not appear to be any counsel representing defendant Game Plan,
3 Inc.

4 MR. RIFKIN: I think the record should also show that
5 the deposition -- and perhaps Mr. Harding should speak to
6 this -- is being taken by agreement, and on the basis of the
7 agreement, the deposition was permitted to go forward. Other-
8 wise, Mr. Meyers had indicated to me that he intended to move
9 the Chicago court to not permit this deposition to go forward
10 in his case, and so the fact that Mr. Meyers is not here, and
11 that the notice of deposition is in his case on its face I
12 think is a fact of no moment. This deposition for all practical
13 purposes to my understanding is being taken in the Bally -
14 Gottlieb case, 78C 2246. As far as I can determine, it is
15 not being taken in the 79C 713 case and it is being taken by
16 agreement between the parties.

17 Now, perhaps you'll educate me if my understanding is not
18 quite correct.

19 MR. WELSH: By agreement between the parties, I take
20 it you mean in agreement between Bally on the one hand and
21 Gottlieb, Rockwell and Williams on the other?

22 MR. RIFKIN: That's what I mean.

23 MR. KATZ: I discussed this with Mr. Meyers, and it's
24 my understanding that this deposition is proceeding in both
25 cases. But Mr. Meyers is relying on you gentlemen to do an
26 adequate representation.

27 MR. RIFKIN: I have a completely different understanding.
28 I had that directly from Mr. Meyers. He is not out here.

1 because he is under the impression this deposition is being
2 taken in our case and not in his case.

3 MR. KATZ: ~~I am~~ That's not my understanding. ~~attempts to~~

4 ~~find~~ MR. HARDING: ~~Bel~~ I think it ought to be indicated that the
5 agreement included a limitation as to the scope of the depo-
6 sition and the scope of any documents produced, and that the
7 scope would be limited to the operative facts of a certain
8 affidavit of a Dr. Tai. ~~By~~ By operative facts, we're talking ~~and~~
9 about the thrust of the affidavit, not any incidental facts
10 mentioned in the affidavit. ~~believe in a Dr. Tai. I feel I can~~

11 MR. WELSH: ~~Believe~~ Q. Where do you live, Mr. Lemas?

12 THE WITNESS: ~~Believe~~ A. 1223 Rousseau Drive, Sunnyvale.

13 Q. Are you employed? ~~I had also been subpoenaed. That is~~

14 A. Yes, I am. ~~I have been subpoenaed. In fact, I wrote a~~

15 Q. By whom? ~~Believe~~ A. ~~Believe~~ a copy to Honeywell attorneys mentioning

16 that ~~Believe~~ Synertek Systems Corporation, formerly Microcomputer
17 Associates, a California corporation. ~~Believe~~ My position is ~~Believe~~ I
18 President. ~~Believe~~ that I didn't think it was necessary. ~~Believe~~

19 Q. Does Synertek Systems Corporation have any relation-
20 ship with any other company? ~~Believe~~ A. ~~Believe~~ It is a wholly owned subsidiary of Honeywell Incor-

21 porated. ~~Believe~~ Honeywell attorney is Ted Neils at the ~~Believe~~

22 Q. How long has Synertek Systems Corporation been in
23 existence? ~~Believe~~ A. ~~Believe~~

24 A. As Synertek Systems Corporation, a little over two
25 and a half years. ~~Believe~~ But it's the same corporation merely re-
26 named. ~~Believe~~ So that California corporation has been in existence
27 since April of 1974, a little over six years. ~~Believe~~ I didn't want
28

1 Q. Did the subpoena which you received call for the
2 production of documents? ~~recollection of any documents that~~

3 A. Yes. I apologize for that. I made an attempt to
4 find those. Ray Holt, who I think has been previously sub-~~and~~
5 penaed, has collected some of these documents together. I've
6 been out of town most of the last two weeks, and I have not
7 had a chance to review those. However, I spoke with the ~~counsel~~
8 Honeywell attorney this morning, and he mentioned that he had
9 a conversation with a Mr. Lynch, and that the items of in-
10 terest would be related mostly to a Dr. Tai. I feel I can
11 speak to that from my knowledge without documentation.

12 Q. Did you discuss your subpoena with Mr. Holt? ~~with~~

13 A. I mentioned that I had also been subpoenaed, that is
14 correct. He has also been subpoenaed. In fact, I wrote a
15 memo to my boss with a copy to Honeywell attorneys mentioning
16 that we had been subpoenaed, and asking them if they wanted to
17 have anyone representing us while we give the subpoenas. I
18 mentioned to them that I didn't think it was necessary, and they
19 agreed with that. ~~yesterday with Mr. Katz, and we once~~

20 Q. Would you tell me please who is the Honeywell work
21 attorney? ~~y that was court on out here. We indicated that~~

22 A. The Honeywell attorney is Ted Neils at the corporate
23 offices in Minneapolis, Minnesota.

24 Q. How do you spell Neils? ~~is not going to allow discovery~~
25 A. That's N-e-i-l-s. ~~to litigation. It's closed.~~

26 Q. Did you bring any documents with you in response to
27 the subpoena? ~~then that's fine, and we'll be liberal in~~

28 A. No, I did not. ~~This was not because I didn't want~~

1 to. I really just didn't have time to collect them together.

2 TAI Q. Do you have any recollection of any documents that
3 might still be in existence? I am.

4 MR. HARDING: I object to the question. It's vague and
5 ambiguous as to what subject matter the question is directed
6 to.

7 It was mentioned to me that he had -- I'm vaguely
8 aware. MR. WELSH: Q. That is documents that were indicated
9 in the attachment, Exhibit A to the subpoena. I don't know much in

10 MR. HARDING: I object to that question. It's ir-
11 relevant. The scope of the document production request has
12 been limited by agreement to a very narrow area of documents
13 including those proving or disproving any relationship with
14 Dr. Tai and communications concerning a certain pin ball de-
15 velopment.

16 MR. WELSH: Q. You may answer the question.

17 MR. HARDING: Mr. Welsh, maybe this would be an appro-
18 priate time. To the extent that you waver outside of the
19 agreed area, you are forcing defendants to consider Rule 30 D.
20 We had the conversation yesterday with Mr. Katz, and we once
21 again, before everybody came to California, had tried to work
22 out exactly what was going on out here. We indicated that
23 Rule 30 D may be invoked unless everybody agreed to abide by
24 the agreement, the scope of this deposition to the operative
25 facts of the Tai affidavit. We're not going to allow discovery
26 to be reopened in the Chicago litigation. It's closed. To
27 the extent that you ask questions and seek documents within
28 the agreement, then that's fine, and we'll be liberal in
allowing your inquiry into that area.

1 THE MR. WELSH: ~~That~~ Q. Are you acquainted with a Dr. Phil
2 Tai? ~~courses that we gave for Intel. That's all.~~

3 THE WITNESS: ~~Yes~~ A. Yes, I am. ~~gave, who do you mean by~~
4 Q. Are you aware of Dr. Tai's having made an affidavit
5 dated August 1, 1980? ~~myself. During the time that we were~~
6 ~~employed at Intel~~ A. It was mentioned to me that he had -- I'm vaguely
7 aware of the fact that he had made a deposition I believe ~~it's~~
8 having something to do with this case. I don't know much in
9 detail. ~~in behalf of Intel for a fee, and we did this over the~~

10 Q. From where did you receive that information?

11 A. Ray Holt. ~~you were~~ Computer?

12 Q. Have you seen a copy of the affidavit of Dr. Tai?

13 A. No, I have not. ~~position with that company?~~

14 Q. Did you discuss with Mr. Holt the subject matter of
15 the affidavit? ~~were your duties?~~

16 A. Only to the extent that he mentioned that Dr. Tai
17 mentioned that he may have discussed something with us about
18 microprocessors in pin ball machines during the time we were
19 consultants to the Intel Corporation. That's all.

20 Q. In that discussion with Mr. Holt, did he mention to
21 you the term matrix multiplexer?

22 A. No, he did not. ~~in the employment during that time~~

23 Q. Did he mention the term multiplexer?

24 A. No. ~~Mr. Holt also work for Comdata~~

25 Q. Do you know whether there are any documents in
26 existence that relate to the consulting work that you did for
27 Intel? ~~I only know that he left Comdata at the same time I~~
28  ~~and~~ There are documents which identify various courses

1 that we gave. These were contractual in nature for most of
2 the courses that we gave for Intel. That's all.

3 Q. When you say courses we gave, who do you mean by
4 we? *See his client.*

5 A. Ray Holt and myself. During the time that we were
6 employed first as consultants for Compata Incorporated, and
7 thereafter while we were employed by Microcomputer Associates,
8 our own company, we contracted to give microprocessor work-
9 shops on behalf of Intel for a fee, and we did this over the
10 course of probably a year.

11 Q. When were you with Compata? *to Synertek*

12 A. I was with Compata from March '69 to April of '74.

13 *Mac* Q. What was your position with that company? *Changed to*
14 *Syn* A. My title was Senior Consultant I believe.

15 Q. What were your duties? *19787*

16 A. My duties were to perform the normal consulting
17 kind of services for any of the Compata clients, some of whom
18 I would contact myself.

19 Q. Did you have any ownership in Compata? *-- what we*

20 *Mac* A. *By* I had stock options, but other than that, no owner-
21 ship. *of clients.*

22 Q. Did you have any other employment during that time?

23 *Mac* A. No, I did not. *you have any other employ* *any?*

24 Q. Did Mr. Holt also work for Compata?

25 A. Yes, he did.

26 Q. And what was his period of employment, if you know?

27 A. I only know that he left Compata at the same time I
28 did *and* was employed there just for about a year. I don't

1 remember when he came aboard. and I formed equal shares in the
2

3 Q. And what were his duties? at the company.

4 A. Similar to mine as a consultant, but I don't remember his title.

5 Q. Do you know if he had other employment at that time?

6 A. To my knowledge, he did not.

7 Q. When was Microcomputer Associates formed?

8 A. April, 1974. Holt. Discovery is closed, and now

9 Q. That was a California corporation?

10 A. Yes, it was. the subject's deposition. We're not going to re-

11 Q. And the predecessor in name to Synertek?

12 A. That's correct. At the time of the acquisition of Microcomputer Associates by Synertek, the name was changed to Synertek Systems Corporation.

13 Q. That was sometime in 1978?

14 A. The official acquisition was February of 1978.

15 Q. What was the business of Microcomputer Associates when it was formed?

16 A. When it was formed, it was a consulting -- what we call a systems house -- doing microprocessor consulting for a variety of clients.

17 Q. During the period of 1974 when you were with Microcomputer Associates, did you have any other employment?

18 A. No, I did not.

19 Q. Did Mr. Holt? We're not going to re-open discovery.

20 A. No. Q. With respect to the services performed

21 Q. Did you have any ownership in Microcomputer Associates when it was formed?

1 A. Yes, certainly Ray and I owned equal shares. To-
2 gether we had about 96, 98 per cent of the company.

3 Q. Could you be more specific about the consulting
4 services that you rendered as Microcomputer Associates?

5 MR. HARDING: I object to the question, Mr. Welsh.
6 Background is background. I think we have amply gone into the
7 background of Microcomputer Associates, Inc. and Compata and
8 of this witness and Mr. Holt. Discovery is closed, and now
9 I request that you get on to the specific narrow topic that is
10 the subject matter of this deposition. We're not going to re-
11 open discovery as to all the specific businesses and teachings
12 and jobs of Microcomputer Associates Inc. and/or Compata.

13 MR. WELSH: I think that's a reasonable question,
14 Mr. Harding, and I don't expect to go into a lot of detail,
15 but I don't think the record is informative or just generally
16 stating consulting services with respect to Microcomputer. So
17 I would like to ask the witness to go ahead and answer the
18 question.

19 MR. HARDING: The subject matter of this deposition
20 has to do with the very specific function of Microcomputer
21 Associates Inc. in connection with certain courses that were
22 taught. Now, to the extent that your question goes outside
23 that subject, you are outside our agreement, and I have been
24 very liberal so far in allowing you to get background outside
25 of the agreement. We are not going to reopen discovery.

26 MR. WELSH: Q. With respect to the services performed
27 by Microcomputer Associates for Intel, would you be more
28 specific?

1 THE WITNESS: ~~know~~ A. During the time that we were employed
2 with Compata, we had put together course outlines, course
3 material and an agenda for teaching the fundamentals of ~~the~~
4 applying microprocessors to any application. And during the
5 employment with -- as Microcomputer Associates, we used that
6 material to teach courses around the United States to groups
7 that were signed up and paid a fee, and that administration
8 was handled by Intel, but we actually performed the teaching
9 of the course per se, Ray Holt and myself.

10 Q. Were there any other teachers of those courses?

11 A. In the latter stages, one or two other instructors
12 were brought in only because in one particular case, Ray Holt
13 could not make it. A consultant was brought in. ~~question~~, Mr.

14 Q. What was his name? ~~try to stray outside of the~~

15 A. I don't remember his name. I'm sorry. He was ob-
16 tained by Intel. ~~He was from the Dallas-Houston area, but I~~
17 don't remember his name. I only taught one course with him.

18 Q. Was it a Bob Garrow? ~~and that that is with in the~~

19 A. No, it was not. Bob Garrow was an Intel employee.

20 Q. Did he have anything to do with the courses? ~~any~~

21 A. Bob Garrow? You started working on the Intel courses
22 under ~~Q. the~~ Yes. ~~that between Intel and Compata, did you just th-~~

23 A. Only to the extent that if we had questions to ask
24 additional information about some of Intel's products, ~~at~~ ~~at~~
25 various times we would talk to Bob Garrow. ~~ing the courses.~~

26 Q. Do you know what his position was at Intel? ~~for Intel~~

27 A. No, I do not. I know he was an engineer, but I don't
28 know ~~what~~ what official capacity he had. ~~etc.~~

1 Q. Do you know who he reported to? the Compata-Intel
2

3 A. No, I don't.

4 Q. When did you and Mr. Holt start giving the courses
5 as employees of Compata, Inc.? Mr. Holt's files included that?

6 A. Probably a year, roughly a year before our leaving
7 Compata. Ray Holt was hired by Compata in conjunction with
8 this contract. you were working on the Intel course for Compata.
9 Q. So that would have been approximately April or there-
abouts in 1973?

10 A. Approximately.

11 Q. Had you done any work for giving courses before
12 Compata obtained the contract with Intel? the time you were
13 with MR. HARDING: I'm going to object to the question, Mr.
14 Welsh. Now, you are continuing to stray outside of the
15 specific Intel subject matter. Are you going to request him
16 to answer that question? the preparation was essentially one
17 phase MR. WELSH: Yes.

18 MR. HARDING: Do you agree that that is within the
19 agreement? I'm going to admit object, Mr. Welsh.

20 MR. WELSH: Well, I could word it a different way.

21 Q. At the time you started working on the Intel courses
22 under the contract between Intel and Compata, did you just then
23 commence to do your work in preparing the courses? the subject
24 THE WITNESS: A. Yes. The contract included essentially
25 designing the courses, and thereafter giving the courses.

26 Q. Do you know if Mr. Holt taught any courses for Intel
27 prior to that time when he was hired by Compata?

28 A. To my knowledge, he did not. relate to the facts of

1 Q. Do your files include a copy of the Compata-Intel
2 contract? My referred to in the affidavit.

3 A. No, they do not. are irrelevant unless it has to do with
4 the

5 Q. Do you know whether Mr. Holt's files included that?

6 A. I do not believe they would. These were Compata
7 contracts, that we did not own when we left the employment.

8 Q. When you were working on the Intel course for Compata,
9 approximately what percentage of your time did you spend on
10 the course? and what Mr. Holt and Mr. Lemus did with respect
11 to

12 A. It was essentially a full-time job during that pre-
13paration. the courses, as well as during the later time re-
14 fer

15 Q. And did that extend throughout the time you were
16 with Compata? You are entitled to go into the subject

17 A. In the preparation of the course, no. We prepared
18 for the course, and thereafter, most of the time was spent in
19 giving the courses. But the preparation was essentially one
20 phase. except as it relates --

21 Q. Approximately how long did that take? courses with

22 MR. HARDING: I'm going to again object, Mr. Welsh.
23 It seems like we're talking now about the early 1973 time
24 frame, clearly well before any relevant time frame which is
25 the subject matter of our present agreement. You've got more
26 than ample background information to get on with the subject
27 matter of our agreement. We're not going to allow discovery
28 to be reopened on Compata and Microcomputer Associates Inc.
teaching courses and subject matter other than it relates to
the operative facts of the Tai affidavit. but your having ac-

te MR. WELSH: I think this does relate to the facts of

1 the Tai affidavit, because it relates to the courses which are
2 specifically referred to in the affidavit.

3 MR. HARDING: Those are irrelevant unless somehow there
4 are communications from Dr. Tai concerning the certain pin
5 ball program found in those courses, and you have not even
6 addressed that subject yet to make them relevant to this
7 deposition.

8 and MR. WELSH: I think we're entitled to go into contacts
9 with Dr. Tai, and what Mr. Holt and Mr. Lemas did with respect
10 to the courses, the practices that they followed, even when
11 setting up the courses, as well as during the later time re-
12 ferred to in Dr. Tai's affidavit.

13 MR. HARDING: You are entitled to go into the subject and
14 matter concerning the operative facts of the Tai affidavit,
15 which has to do with the subject matter I've discussed. You
16 are not entitled to go into background information of these
17 companies except as it relates --. The fact that he may

18 MR. WELSH: This is specifically the courses with
19 Intel. the questions.

20 MR. HARDING: The courses are outside our agreement
21 unless they relate to the subject matter of the affidavit.

22 MR. WELSH: The courses constitute the subject matter
23 of that affidavit.

24 MR. HARDING: Only to the extent that they relate to
25 certain communications. They otherwise are outside this
26 deposition. We're not going to go into the subject matter of
27 the courses, and if you think we are without your having es-
28 tablished sufficient foundation for going into that as being

1 within the purview of our agreement, then we're suspending.

2 You're going to have to show the relevancy of this line of
3 questioning to our agreement. *It raises some questions that are*

4 MR. WELSH: *stand* Could we have the question again?

5 (Whereupon the reporter read back the previous question.)

6 MR. WELSH: *stand* I will ask the question again. *to have*

7 Q. *When* When did you complete your preparation for the courses
8 and commence giving the courses? *to the full scope of the substance*

9 THE WITNESS: *and* A. Gentlemen, I want to cooperate with
10 this. To tell the truth, I don't know sometimes whether to
11 answer the question or not. I have no axes to grind, but
12 there is obviously some disagreement as to whether I should or
13 should not. I just want to cooperate with this deposition and
14 get on with it. I've got work to go to.

15 MR. WELSH: *you* Q. I think that Mr. Harding has a right
16 to enter his objections on the record. You are under subpoena
17 here. You should answer the questions. The fact that he may
18 make objections to them does not affect your obligation to
19 answer the questions.

20 MR. HARDING: *you* I think it only fair to supplement that,
21 Mr. Welsh, and point out that the legal status of that subpoena
22 is certainly in doubt because of the various motions that either
23 were or were going to be filed and in light of our agreement
24 limiting the subject matter of the subpoena. So to the extent
25 that you go outside our agreement, I seriously doubt the *the*
26 validity of the subpoena. *and ask if you recognize that*

27 MR. WELSH: *I do* I disagree with you, Mr. Harding. I
28 think the subject matter of that particular question is within *is*

1 the scope of the agreement, and I think that the affidavit
2 has full force and effect. It was issued by the court here
3 in California, and until a court makes some ruling with res-
4 pect to it, it stands.

5 MR. HARDING: Mr. Welsh, you are not going to be allowed
6 to cause a motion to be withdrawn or not filed on one hand
7 by representations that you are going to narrow a deposition,
8 and then on the other hand say the full scope of the substance.
9 I mean that's absurd.

10 MR. WELSH: Q. You may answer the question, Mr. Lemas.

11 A. THE WITNESS: I don't remember exactly how long
12 it took. It was on the order of a few months. I don't
13 remember exactly how long.

14 Q. Do you remember when the first course was given?

15 A. The first course was given at Intel, but I don't
16 remember exactly when. It was during that year, April, 1973
17 to April, 1974, and probably near the front end of that time
18 period.

19 Q. Were any promotional materials prepared for the
20 courses?

21 A. Yes, there were.

22 Q. In what form did they take?

23 A. Brochures and mailers.

24 Q. I show you a copy of what was marked in a previous
25 deposition as Exhibit GD214 and ask if you recognize that?

26 A. Yes, I do.

27 Q. Is that an example of the type of promotional materials

1 that you were speaking about? ~~was unqualified to comment on~~
2 A. Yes.

3 Q. Does that contain -- could you tell me what that
4 document contains? ~~and what it's purpose is~~

5 MR. HARDING: Mr. Welsh, will you please get on with
6 the subject matter of the deposition and not go into documents
7 that have been marked as exhibits during the full course of
8 discovery and you've had the opportunity to cross examine, and
9 then not ask this witness to look at the documents and in-
10 terpret them and give his broad scope view of what they say
11 or don't say. That is outside the scope of this deposition.
12 We have yet to get to the subject matter of the deposition.

13 MR. WELSH: Specifically, Mr. Harding, this relates
14 to several paragraphs of the Tai affidavit: Specifically 11,
15 12, 13, just for example.

16 MR. HARDING: No, sir.

17 MR. WELSH: It relates to the courses, and this
18 particular document even shows a picture of Dr. Tai. The
19 relationship of Mr. Lemmas with Dr. Tai is surely relevant to
20 the affidavit. ~~in view of my recollection, it must have been~~

21 MR. HARDING: Then get on to that relationship.

22 MR. WELSH: I am, and I will do it my way.

23 MR. HARDING: No, sir, you won't if it's outside the
24 scope of our agreement. ~~if this was the first one, I believe~~

25 MR. WELSH: I disagree with you that this question
26 is outside the scope. ~~whether that was the first branch of~~

27 MR. HARDING: You have asked for his unqualified broad
28 view of what he thinks that document shows, and we could go

1 on for a day. I'm sure Mr. Lemas is qualified to expound upon
2 that document for a day, and we're not going to have it.

3 MR. WELSH: Q. Could you answer the question please?

4 I think you are intimidating the witness, Mr. Harding.

5 MR. HARDING: I think, Mr. Welsh, you are intimidating
6 the defendants in this case, and you are bringing in Rule 30 D.
7 I would request that you get into the subject matter of this
8 deposition. If you want to ask questions about Dr. Tai, then
9 please get on with it. Don't ask global questions. This is
10 not a full discovery deposition. It is a limited deposition.

11 MR. WELSH: Q. Does the document give dates of any
12 work-shops? Do you work with Dr. Tai in that effort?

13 THE WITNESS: A. Yes, it does. Specifically, touchin

14 Q. What work-shop dates does it give? he that he might
15 have A. The one shown there. some of the microprocessors.

16 Q. On the first page? association with him during the
17 time A. Yes, developing the course, and our relationship with

18 Q. And what year was that, to the best of your recol-
19 lection? it in charge of the training group, and then we had a

20 bus A. To the best of my recollection, it must have been
21 '73. during that period of microcomputer A. associate, working

22 Q. And that gives the date of October, 1973 through
23 December of 1973; is that correct? that then starting, a brochure

24 A. As I believe so. If this was the first one, I believe
25 it was. Please, I object to the question as leading and

26 Q. Do you know whether that was the first brochure?

27 A. Well, they put out several, as I recall, and that
28 would be about the right time frame for the first series.

Q. Did you work with anyone at Intel in preparing for the courses?

A. We were able to tap on several people there. Those names go back a few years. Bob Garrow had to be one of them obviously. I worked with a consultant that Intel had hired to write their PL/M program by the name of Dr. Gary Kildell only to the extent that I required PL/M information from him. I interfaced with a few technical people there. But for the most part, we used the documentation that Intel had available describing their microprocessors to develop the course. That was our job.

Q. Did you work with Dr. Tai in that effort?

A. I don't recall whether we specifically touched on Phil Tai. We might have. It would make sense that he might have been asked questions about some of the microprocessors. But we did not have a close association with him during the time we were developing the course, and our relationship with Phil Tai was later after we became Microcomputer Associates. He was put in charge of the training group, and then we had a business association with him. He was our business interface to Intel during that period of Microcomputer Associates working with Intel.

Q. Do I understand correctly that then starting approximately April of 1974 you had a close association with Dr. Tai?

MR. RIFKIN: I object to the question as leading and mischaracterizing his previous testimony.

MR. WELSH: Q. You may go ahead and answer.

MR. HARDING: Q. Would you please reread his last answer.

1 (Whereupon the reporter read back the previous question
2 and answer.)

3 MR. HARDING: Mr. Welsh, he expressly said he did not
4 have a close relationship, and I strongly object to the use
5 of that term in your question.

6 MR. WELSH: Q. You may answer the question.

7 THE WITNESS: A. It was approximately the time of MAI,
8 in other words, April of 1974, where Phil Tai was put in
9 charge of training, and then we had that business relationship
10 with him, approximately that time.

11 Q. What did the business relationship involve?

12 A. Contractual, scheduling of the courses, fees, any-
13 thing having to do with the business aspects, you might say,
14 of the course. Q. That was in April of 1974 approximately when that
15 commenced? A. That's right.

16 A. Thereabouts, to the best of my recollection. Q. After the courses were started, and before that
17 time when you became Microcomputer Associates, what was the
18 extent of your contact with Dr. Tai? A. Very little to my recollection. Incidentally, as
19 I recall, when that picture was made, we wanted to present a
20 scenario of a typical course. Both Bob Garrow and Phil Tai
21 were brought in quite frankly ad hoc. They happened to be
22 around, and they were brought in. But I do not remember any
23 heavy contact with him, you know, any more so than any other
24 individual before then.

25 A. You referred to a picture, and let the record show

that you are pointing toward a picture on the third page of GD214. Could you identify the persons in that picture?

A. Certainly: Ray Holt, myself, Phil Tai and Bob Garrow.

Q. Where is Dr. Tai in that picture?

A. He is in the foreground.

Q. Would that be in the left center portion of the picture?

A. Left foreground.

Q. And where are you?

A. I'm on the far right in the background.

Q. And which is Mr. Garrow?

A. He is next to me, sitting down.

Q. And that leaves Mr. Holt in the upper left-hand corner; is that correct?

A. That's right.

Q. Is it correct that you mentioned earlier in connection with the courses that they included applications of microprocessors?

A. We touched on the subject of applications, but as I recall, only in a general sense. We did not cover specific applications. The courses were introductory in nature, and gave examples of using the Intel equipment, development equipment, and gave programming examples in the instructions that we used on the Intel processors to have it do things. But as I recall, we didn't touch specifically on applications.

Q. Did you report to anyone at Intel prior to April

1 A. The initial contract was made, and the contact was
2 Hank Smith, who was in charge of the microprocessor, at least
3 in the technical end. That was our contractual interface.

4 Q. To the best of your knowledge, were the courses
5 indicated on the front of Exhibit GD214 actually given?

6 A. To the best of my knowledge, they were. There may
7 have been some cancellations, but I don't recall them. That
8 did occur.

9 Q. Who did you report to at Intel after Microcomputer
10 Associates came into existence?

11 A. As I said earlier, to the best of my knowledge, Phil
12 Tai was put in charge of training in that time period, and
13 when he was in charge, we reported to Phil Tai on a contractual
14 basis.

15 Q. How long did that relationship exist?

16 A. I would say approximately a year. During that time,
17 Phil Tai planned to phase in his own people, and phase out ~~is~~
18 the consultants. As I recall, he had that intention early on.
19 But I would say over a period of approximately a year, we were
20 reporting to him and continuing to give the courses.

21 Q. Was that work done under a contract between Intel and
22 Microcomputer Associates?

23 A. Yes, it was. A determination of whether they should

24 Q. Was that a written contract?

25 A. Yes, it was. When did you teach your first course?

26 Q. Do you have a copy of the document?

27 A. No, I do not, not with me. *remember when the last one*
28 Do you know whether you have one in any of your papers?

1 A. I think our files may have a copy of that contract.
2 I haven't looked at it for a number of years.

3 Q. Do you recall what the period of time for the con-
4 tract was?

5 A. No, I do not. I don't recall. I believe it was
6 sort of an ongoing consultant agreement whereby when they
7 desired, we would provide the services. I believe that that
8 was the existence of the contract without specifically giving
9 the terms of time.

10 Q. Was there more than one contract?

11 A. I don't remember. There may have been.

12 Q. Could you get us a copy of the contract?

13 MR. HARDING: I object to the contract as being outside
14 the scope of the subpoena and of this deposition, and until you
15 establish some connection with Dr. Tai and communications con-
16 cerning pin ball developments. Otherwise that's nothing more
17 than broad based discovery, Mr. Welsh, which is outside this
18 deposition.

19 THE WITNESS: A. If it is in our files and I can find
20 it, I'll be glad to --

21 MR. HARDING: At this time, I will request the witness,
22 before he provides them any documents, to provide them to his
23 counsel, Mr. Neil, for a determination of whether they should
24 be produced.

25 MR. WELSH: Q. When did you teach your last course
26 at Intel?

27 THE WITNESS: A. I do not remember when the last one
28 was.

1 Q. Do you recall approximately when? *During that year.*

2 A. About the only thing I could say is that if that period of time was about a year, it would be near the end of that year. *Did you consult with Dr. Tai with respect to these*

3 *char* Q. During that year --

4 MR. HARDING: Excuse me, I object on the last question; 5 lack of foundation that he has any knowledge in which to give 6 the last answer. *Information, Mr. Welsh. He's not an witness*

7 with MR. WELSH: Q. During that year, what percentage of 8 your time did you spend on the Intel courses? *Question.*

9 THE WITNESS: A. It was maybe 20 per cent of the time. 10 It began more heavily at the beginning, more heavily on the 11 courses, and then thinned out to where we were spending much 12 less of our time on the courses. *So yes, more than likely,*

13 yes. Q. For approximately how long after the April 1974 time 14 period did you, as you put it, work heavily on the courses?

15 A. *The first several months had to be pretty heavy on* 16 *the Intel courses, and then gradually it thinned out. We were* 17 *doing other things as well.* *about to incorporate in the*

18 Q. *Q. And how many months do you consider to be the first* 19 *several approximately?* *as a source of information for the*

20 A. *A. Three or four to the best of my knowledge.*

21 Q. During that time, did you have ongoing contacts with 22 Dr. Tai? *After provided my friend. It was about half and half*

23 A. *On a contractual basis we did. The courses for the* 24 *most part were -- many of them were out of town. So we were* 25 *giving them out of town, and when we came back, we would touch* 26 *base with Phil, and tell him how they went, et cetera.*

1 Q. Were changes made in the courses during that period?

2 A. There were always some small changes and improvements being made actually on an ongoing basis.

3 Q. Did you consult with Dr. Tai with respect to those changes?

4 MR. RIFKIN: I object to this question. It's leading, as have the last three or four questions. There is a proper way of eliciting information, Mr. Welsh. He's not an adverse witness.

5 MR. WELSH: Q. You may answer the question.

6 THE WITNESS: A. What was the question please?

7 (Whereupon the reporter read back the previous question.)

8 THE WITNESS: A. Any of the changes that we make in the course he would have to review. So yes, more than likely, yes.

9 MR. WELSH: Q. What types of changes were made?

10 THE WITNESS: A. Oh, improvements in examples that we would use say in the programming, new products that Intel might be announcing with an attempt to incorporate in the course, very general kinds of changes.

11 Q. What did you use as a source of information for the examples? Did you receive any materials from Dr. Tai after you began?

12 A. We created some. We extracted some from the existing documentation provided by Intel. It was about half and half I would guess.

13 Q. Did they involve specific applications of microprocessors? The documents were always made available to me.

14 MR. RIFKIN: I object to the question as leading.

1 MR. HARDING: And as having been asked and answered.

2 THE WITNESS: A. Not to my knowledge. The kind of
3 programming examples that we would come up with would be
4 short subroutines which would be really generally applicable,
5 multiplication routines, divide routines, examples in PL/M
6 for doing things. But as I recall, these were not targeted to
7 any specific application. They were intended to be general,
8 and they were. *you met with Dr. Tai?*

9 MR. WELSH: Q. What is PL/M? *is a lack of formal-*

10 THE WITNESS: A. PL/M stands for programming language
11 for microprocessors. It's a higher level language. It's much
12 like PLI. *It's intended to allow users of microprocessors to*
13 *more quickly develop software for them.* *question, sometimes*

14 Q. From whom at Intel did you get the documents that
15 you referred to? *no -- I don't remember specifically always*

16 A. All of the documents? *handed to Phil Tai.*

17 Q. Yes. Q. Do you know whether there were times

18 A. Initially mainly from Hank Smith. As I recall,
19 no proprietary information was given to us. We used mainly
20 public domain marketing manuals, instruction manuals provided
21 by the Intel Corporation in support of their products. *question*

22 Q. Did you receive such materials from Dr. Tai after you
23 began working with him? *question.*

24 MR. RIFKIN: Object to the question as leading. *question*

25 THE WITNESS: A. I do not recall specifically receiving
26 anything directly from his hands, but we would -- we were
27 always -- these documents were always made available to us.
28 Some of them were actually handed out as course material. Some

1 of the manuals were provided to us so that we could provide
2 the students with these manuals as well. *almost, witness - it*

3 MR. WELSH: Q. When you had contacts with Dr. Tai,
4 where did they take place? *the same location, to the best of*

5 THE WITNESS: A. Usually at Intel offices, sometimes
6 in the offices, sometimes outside, but almost always there.

7 Q. Were both you and Mr. Holt present on all of the
8 occasions when you met with Dr. Tai? *not true*

9 MR. RIFKIN: Objection. There is a lack of founda-
10 tion on that question, and misleading. There has been no
11 establishing that Holt was ever present when Mr. Lemmas met *with*
12 with Dr. Tai. *as best in the normal course of discussing, witness*

13 THE WITNESS: I. d. A. To answer the question, sometimes *witness*
14 Ray was there. Sometimes he wasn't to the best of my know-
15 ledge. There was no -- I don't remember specifically always
16 having us both present when we talked to Phil Tai. *issues*

17 MR. WELSH: Q. Do you know whether there were times
18 when Mr. Holt met with Dr. Tai that you did not? *noting been*

19 THE WITNESS: A. I do not remember any specific times,
20 but it would not surprise me if he did. *out applications of*

21 MR. HARDING: I'm going to object to the last question
22 for lack of foundation showing that he has any knowledge in
23 which to respond to that question. *Very often questions were*

24 MR. WELSH: Q. Where was Dr. Tai's office at Intel?

25 THE WITNESS: A. It was on the main floor in the main
26 building. *in response to questions may asked by students*

27 Q. In what city?

28 A. In Santa Clara. *the intent was to show the general*

1 Q. Do you recall the address?

2 A. No, I do not. It's the Intel address, whatever it
3 is.

4 Q. Are they still in the same location, to the best of
5 your knowledge?

6 A. They still own that building and several others.

7 Q. Do you recall every discussing with Dr. Tai any
8 specific applications of microprocessors?

9 A. No, I do not, nothing specific.

10 Q. Do you remember generally?

11 A. We might have touched on general applications. However,
12 that was just in the normal course of discussing micro-
13 processors. But I do not recall any specific applications per-
14 se. Microprocessors were and are very pervasive, and there is
15 virtually no application that they don't apply to.

16 Q. In the conduct of your courses, did you discuss
17 specific applications?

18 MR. RIFKIN: Object to the question has having been
19 asked twice before unless there is some different shading to
20 that question. You've asked him twice about applications as
21 part of the course contact.

22 THE WITNESS: A. I do not remember specifically high-
23 lighting any application. No doubt very often questions were
24 asked could it do this or could it do that, and we would res-
25 pond to the question, generally yes, since they could. But
26 that would be in response to questions say asked by students
27 in the course.

28  But again, as I recall, the intent was to show the general

1 application of microprocessors to a number of applications.
2 I don't remember highlighting any specific one per se.

3 MR. WELSH: Q. You did receive questions from the
4 people taking the courses, however?

5 THE WITNESS: A. There were always questions, yes.

6 Q. Did they involve specific applications?

7 A. Sometimes they would, and sometimes they wouldn't,
8 depending on -- usually people attending the course had a
9 reason to, and they were from various parts of the industry,
10 and they would no doubt be asking questions relating to their
11 particular field. So we would respond to those as best we
12 could.

13 Q. Do you recall during the courses any discussions
14 regarding application of a microprocessor to any amusement
15 device?

16 A. I do not specifically recall that. But that's a
17 number of years back, and it wouldn't surprise me that the
18 general area of amusement kind of devices might have been
19 touched on. But I don't remember in any detail discussing
20 anything.

21 Q. Do you recall any discussions of the use of a micro-
22 processor with a pin ball machine?

23 A. I don't recall anything specifically, no.

24 Q. Have you ever discussed such an application for a
25 microprocessor with Mr. Holt?

26 MR. HARDING: Would you repeat the question?

27 (Whereupon the reporter read back the previous question.)

28 MR. HARDING: Mr. Welsh, at least you are going to have

1 to agree that we have limited the subject matter to a specific
2 time frame. You just asked a question that would encompass
3 1980 technology and discussions and the like, which are out-
4 side the scope of this deposition.

5 MR. WELCH: Q. Referring to the time period 1973-
6 1974, did you discuss any applications of a microprocessor to
7 a pin ball machine with Mr. Holt? *have to do with it technically*

8 THE WITNESS: A. I can't say that we discussed anything
9 having to do with pin ball machines in that particular time
10 frame. *you discuss the subject with Mr.*

11 MR. HARDING: *Then I object to the answer to the extent*
12 that he goes any further. You've answered the question, and
13 we'll move to strike any further answer. *we would have to*

14 MR. WELSH: Q. Have you completed your answer?

15 THE WITNESS: A. Well, I was going to say that some-
16 where at least beyond that time -- it might have been in that
17 time frame, but my guess is it was beyond that time -- we did
18 talk about it. We had a contract, a consulting contract with
19 Ramtek *at one time where Ray was in charge of that, and I*
20 believe the application was pin ball machines. *We at another*
21 time had a contract with the Brunswick Corporation to consider
22 the use of microprocessors in a pin ball machine. Those are
23 the two instances I do recall, but I don't remember exactly
24 what time frame it was. *you indicate what he did and who to Dr.*

25 Q. Regarding the contract with Ramtek with respect to
26 the pin ball machines, did you have anything to do with that
27 work? *work is directed to the attorney's.*

28

MR. HARDING: I object to the question, and unless you

1 relate it to the subject matter of this deposition, we'll in-
2 voice Rule 30 D. We're going to stay strictly within our agree-
3 ment. We're not going to reopen discovery. *reopened*

4 MR. WELSH: Q. You may please answer the question.

5 THE WITNESS: A. Can you ask that again please?

6 (Whereupon the reporter read back the previous question.)

7 THE WITNESS: A. I had nothing to do with it technically.
8 It was one of our contracts. I might have asked whether pay-
9 ment had been made, but nothing to do with it technically. *that*

10 MR. WELSH: Q. Did you discuss the project with Mr.
11 Holt while he was working on it? *in detail there are four ques-*

12 THE WITNESS: A. Not in any detail, only how it was *going*.
13 going. No more than the discussion that we would have on *any*
14 any contract as to how it was progressing. *and we're doing*

15 Q. Do you recall discussing that contract with Dr. Tai?

16 A. No, I do not. *that and those courses unless you re-*

17 Q. Do you recall discussing the subject matter of that
18 work with Dr. Tai? *by contacts from this third party. We're*

19 A. Absolutely not. *subject matter of that without a pro-*

20 Q. During the conduct of the course, what did you do?

21 A. The course is broken up in two parts,--

22 MR. HARDING: Mr. Welsh, excuse me please, you are once
23 again getting outside the scope of the agreement. We're not
24 going to have it unless you relate what he did somehow to Dr.
25 Tai. That's clearly outside. We're not going to reopen dis-
26 covery. I keep saying it and saying it, and now you are *in the*
27 harrassing as directed to the defendants.

28 MR. WELSH: The courses are the subject matter of the

1 Tai affidavit, and the conduct of the courses clearly comes
2 within the agreement which we had with you, the part that
3 Mr. Holt played and the part that Mr. Lemas palyed. *he has been*

4 MR. HARDING: *the* It clearly does not, and if our agreement
5 is in dispute, then we're going to have to see Judge Grady
6 in Chicago to get it ironed out. The agreement that you made
7 with Mr. Lynch was to the operative facts of the Tai agreement
8 and as that related to any communications or any knowledge
9 whatsoever between this witness and Mr. Holt of any work that
10 was done on pin ball by a third party as related through the
11 person of Dr. Tai. You've probably asked three or four ques-
12 tions now within the scope of that agreement, and the rest of
13 it has been outside. I have been very generous in allowing
14 the extremely broad questions to be answered. Now we're going
15 to have to get into it. We're not going to go into the general
16 teachings of those materials and those courses unless you re-
17 late somehow that Dr. Tai had an input into those courses *his*
18 which was initiated by contacts from this third party. We're
19 not going to go into the subject matter of that without a pro-
20 per showing. Now, you make the proper showing, and there is
21 no problem. *The affidavit refers to the educational*

22 MR. WELSH: *Dr. T.* The agreement in accordance with the *the*
23 stipulation filed with the court was that the deposition would
24 be limited to the factual matters set forth in the Tai affi-
25 davit. *you are*

26 MR. HARDING: And as agreed with Mr. Lynch, that's the
27 operative facts of the Tai affidavit -- *generally*, and the use
28 of *of* MR. WELSH: *proced* As stated in the stipulation. *on of the*

1 MR. RIFKIN: That stipulation doesn't apply to this
2 deposition.

3 MR. KATZ: It's the same agreement that we had with
4 the other deposition; the discussion with Goldenberg and
5 Gerson Meyers. Neither of them are here. But that was the
6 agreement. It was the same agreement that we had with the
7 Holt deposition. It was only made so that you would not im-
8 pede our ability to move forward with the deposition.

9 MR. HARDING: To the extent that we have a disagreement
10 on the agreement, I guess then we can either try to get Mr.
11 Goldenberg and Mr. Lynch on the line, and we'll suspend to
12 that time, or we go back to Chicago. But we're not going to
13 go into general course work unless you can make a general
14 showing that it's within the thrust of that affidavit. You
15 had your opportunity to cross examine Mr. Holt on all that
16 subject matter when it was raised at his earlier deposition.
17 You've been aware of Mr. Lemas, and you could have taken his
18 deposition at any time within the discovery period. You are
19 not going to reopen discovery. If you will make the proper
20 showing --

21 MR. WELSH: The affidavit refers to the educational
22 group of which Dr. Tai stated he was manager, and the course
23 of what that group did is within the scope of the agreement,
24 and what Mr. Lemas' part in that group is and in the conduct
25 of the courses.

26 MR. HARDING: The affidavit also refers, Mr. Welsh, to
27 the operation of Intel microprocessors generally, and the use
28 of Intel microprocessors in the specific application of cus-

1 tomers. We're not going to go into that subject matter. That's
2 an extreme. You are talking about an extreme.

3 We agreed to the operative facts of the affidavit. There's
4 one reason that you used the affidavit. That's the reason for
5 the deposition. You are going to have to confine your dis-
6 covery to the operative facts of this affidavit. You are not
7 going to be able to pick and chose a word here and there found
8 in 17 paragraphs of an affidavit to open discovery, an affidavit,
9 by the way, which I don't think even mentions Mr. Lemas' name,
10 but I suggest if you have questions within the agreement, then
11 get on with them. Otherwise if you don't have the questions,
12 then I'll assume you are finished as to the specific discovery
13 of the operative facts of the Tai affidavit.

14 MR. WELSH: ~~at all~~ Q. Do you recall the question?

15 THE WITNESS: ~~esp~~ A. No, I do not. ~~with Dr. Tai, now~~
16 Q. Okay, I'll ask it again. What did you do in
17 conducting the courses for Intel? ~~far basis. It was only as~~
18 the MR. HARDING: ~~case~~ I guess the deposition then is -- you
19 have no more questions within the scope of the agreement?

20 MR. WELSH: ~~at all~~ That is not correct. ~~and a week?~~

21 MR. HARDING: Then get on with it, Mr. Welsh, because
22 if you don't withdraw that, then the deposition is suspended.

23 MR. WELSH: ~~at all~~ You can't suspend the deposition.

24 MR. HARDING: Under Rule 30 D, I have complete power
25 to suspend the deposition. If you've got questions, you
26 better get on within the agreement. ~~so we would return home~~

27 MR. RIFKIN: ~~at the~~ Would this be a good time to take a four
28 minute break? ~~in a good relationship with that contact. So~~

1 MR. WELSH: We can take a break.
2 (Whereupon a short recess was taken.)

3 MR. WELSH: Q. Are you informed as to what Dr. Tai's
4 duties at Intel were during this period when you worked with
5 him in connection with the courses?

6 THE WITNESS: A. I only know that they included the
7 training responsibility. I don't what other responsibilities
8 he had.

9 Q. Do you know whether he made any calls on any
10 customers?

11 A. I have absolutely no idea.

12 Q. Do you have any idea at all what other duties he
13 had? Do you think it more than that? One time?

14 A. None at all.

15 Q. With respect to your meetings with Dr. Tai, how often
16 did they occur? (In a little later, never at length.)

17 A. They were never on a regular basis. It was only as
18 the opportunity arose and when necessity arose. So I don't
19 really recall the frequency.

20 Q. Do you have any idea, such as once a week?

21 MR. HARDING: I object to the question, Mr. Welsh. He
22 said it was irregular, and you are asking him to put some sort
23 of a conclusion of regularity onto it.

24 THE WITNESS: A. I really couldn't say as to the
25 regularity. Sometimes we're out of town. Whenever we had to
26 meet with him for whatever reason, also we would touch base
27 with him. He was the contractual contact, so that one does
28 want to maintain a good relationship with that contact. So

1 whenever we could, we did. and that is I am, I do usually

2 MR. WELSH: Q. When did you have your discussion
3 with Mr. Holt regarding the Tai affidavit? I should at least

4 THE WITNESS: A. He mentioned to me a few weeks ago
5 that Phil Tai had said something about microprocessors in
6 the games or pin ball application -- I don't recall whether
7 he used that word specifically -- and more than likely he would
8 be called again on that subject. That was a few weeks ago,
9 three or four. request was made that I should speak with him

10 Q. Was anyone else present when you had that discussion?

11 A. No. It was not a lengthy discussion. No one else
12 I think was there.

13 Q. Did you discuss it more than that one time? I should

14 A. Well, when I got a call from Mr. Katz, I mentioned
15 to Ray that it looked like I was going to be giving a deposi-
16 tion. We chatted about it a little bit, never at length.

17 Q. What was the substance of your discussion with Mr.
18 Katz? with just one other?

19 A. He called and mentioned that there was a subpoena
20 being issued -- it was in the mail -- to give a deposition on
21 the topic of microprocessors on the Gottlieb-Rockwell case,
22 and that's it. I mentioned to him at the time that I didn't
23 really think I had any information to give, anything more. But
24 for whatever the reason, it was being issued.

25 Q. Did Mr. Katz ask to meet with you?

26 A. Thank you for reminding me. He had called before
27 that time and asked if we couldn't get together to discuss the
28 subject. At that time I mentioned to him that I didn't

1 think I had any information and that if I did, I'd really
2 prefer to make sure that all things being equal, since we're
3 really a neutral party in this issue, that I should at least
4 let the opposing attorneys -- make them aware of it, and that
5 I guess I would be willing to meet if it was agreed among
6 themselves that they would both be present. *witness is going*

7 Q. Did anyone suggest to you that you should only meet
8 with Mr. Katz under those circumstances? *Prattwell, I ask him*
9 to A. *and* The request was made that I should meet with Mr. *ent*
10 Katz, but no one urged me to do that, no.

11 Q. Did you discuss it with Mr. Holt? *ring that. The*
12 A. *and* I mentioned that the call had come through, and
13 that I felt that I should -- to be fair on the issue, I should
14 let the other attorneys know, and if they got together and *to*
15 agreed on that, then I would be willing to do that. *the* But I
16 didn't feel like I should meet with one side alone. *in*
17 Q. Did the thought originate with you that you shouldn't
18 meet with just one side? *and BURKE SUBPOENA ON MICRO-*

19 A. *and* Absolutely. I want to remain absolutely neutral
20 in this thing. *I have no reason to do otherwise.* *question and*

21 Q. When you say neutral party, who do you mean? *and*

22 A. *and* Ray and myself as the key people involved in the *in*
23 Microcomputer Associates. *I just want to make sure we're fair*
24 and cooperative. We have no bias one way or the other.

25 Q. So you mean we as you and Mr. Holt? *and*

26 A. *and* That's correct. *The product is microprocessor.*

27 Q. Does Synertek have any relationship with any of the
28 *parties in this suit?*

1 A. Not to my knowledge.

2 Q. Do you know whether Mr. Holt --

3 A. Excuse me, yes, Synertek does have a relationship
4 with Rockwell. Our parent corporation has a relationship, a
5 business relationship with Rockwell --

6 MR. HARDING: To the extent that this witness is going
7 to reveal any trade secret information of either his client
8 or Rockwell International on behalf of Rockwell, I ask him
9 to consider any contracts or whatever, consider any confidential
10 relationship before he answers the question.

11 THE WITNESS: I certainly am considering that. The
12 second source agreement between Rockwell and Synertek is
13 general knowledge. It is something which is done to make the
14 product that they have a relationship with more attractive to
15 a customer. It's brought up before customers and the general
16 public. I don't consider that proprietary information. I
17 have no proprietary information relating to that agreement;
18 only that they do have a second source agreement on micro-
19 processors.

20 MR. HARDING: I'm going to object to the question and
21 answer as lacking foundation that this witness has actual
22 knowledge as to any such agreement or that he is an attorney
23 in order to form a legal conclusion that there is such an
24 agreement.

25 MR. WELSH: Q. What is the product involved?
26 THE WITNESS: A. The product is microprocessors.

27 Q. Synertek manufactures them as a second source for
28 Rockwell?

1 A. Well, both parties have a second source agreement
2 with MOS Technology, who is the designer of the microprocessors.
3 So the second source agreement is with MOS Technology, but to
4 both Rockwell and Synertek have a second source agreement, and
5 I guess I have to agree. I don't see that this has much to
6 do with the subject. *think that the witness would get into that*

7 Q. Is that a written agreement? *as that the witness*

8 A. I assume so. *it very well be stricken with my*

9 MR. HARDING: *Objection, lack of foundation. Also at*
10 this point, Mr. Welsh, I ask you to get back to the subject of
11 the deposition. *and me to talk about these things.*

12 MR. WELSH: I think this relates to the credibility
13 of the witness. *of the parties in this case?*

14 Q. How long has that arrangement been in effect?

15 THE WITNESS: A. That I don't know. *as to whether he has any arrangement*

16 Q. Has it been in effect since Synertek has been the
17 name of your company? *on a continuing basis by any of the*

18 A. A long time before that I believe. *parties.*

19 Q. And it's still in effect? *as to whether he has any arrangement*

20 A. To my knowledge. *as to whether he has any arrangement*

21 MR. HARDING: *Once again I object to the question and*
22 answer, lack of foundation that this man has any legal training
23 in order to have any knowledge of when the agreement is in
24 effect or when it's not in effect, or whether any document
25 actually constitutes an agreement. This is purely hearsay on
26 this witness's part. I move it all be stricken. *as to whether he has any arrangement*

27 MR. WELSH: *Q. Do you know approximately what the*
28 *dollar volume of the business --* *as to whether he has any arrangement*

1 MR. RIFKIN: Mr. Welsh, that question is inappropriate.
2 It has nothing to do with the credibility of the witness.

3 THE WITNESS: Before I answer anything that has to do
4 with the business aspect of Synertek, which is our parent
5 company, I think I'd be wise to check with the Honeywell
6 attorney. I didn't think that the subpoena would get into that
7 at all, and that happens to be information that the parent
8 company, Honeywell, might very well be concerned with my
9 giving. I have some knowledge. A lot of people have general
10 knowledge. If that's a topic, I'd prefer to check to make
11 sure they are wanting me to talk about these things.

12 MR. WELSH: Q. Do you know if Mr. Holt has any
13 relationship with any of the parties in this suit?

14 MR. HARDING: Objectinn on the grounds of hearsay.

15 THE WITNESS: A. None to my knowledge.

16 MR. WELSH: Q. Are you informed as to whether Mr.
17 Holt has been retained on a consulting basis by any of the
18 parties such as Rockwell?

19 THE WITNESS: A. I don't know. I mentioned, it seems
20 Q. Are you informed as to whether he has any arrange-
21 ment with counsel for any of the parties including Rockwell?

22 A. I don't know. of the other counsel?

23 Q. Have you discussed that subject matter with him?

24 A. No, not directly. tell you the truth, I don't rememb

25 Q. Have you discussed it indirectly? in fact, I

26 A. I'm not aware of anything more than his giving a

27 deposition. I think he at one time mentioned that he was

28 being considered as a technical expert, and he may be involved

1 in the trial in Chicago. I don't know of any specific arrangements as to what that means in the case.

2 Q. When did he advise you of that?

3 A. I don't remember. I guess it was sometime after he gave the deposition.

4 Q. A short time?

5 A. I don't think so. My recollection is it was quite some time.

6 MR. RIFKIN: Mr. Welsh, may I enter my objection to any further questions along this line. I fail to see their connection to the subject matter of this deposition or the issue of the credibility of this witness. You are inquiring about a third party.

7 MR. WELSH: Q. Have you ever met any counsel for any of the parties including Rockwell before today?

8 THE WITNESS: A. No, I have not.

9 Q. Have you ever had any conversations over the telephone with any of the counsel?

10 A. Yes. Mr. Katz called me as I mentioned, it seems like a few months ago. Then a second time he called a few weeks ago mentioning something about this deposition.

11 Q. How about any of the other counsel?

12 A. I think I tried to get ahold of Mr. Harding after Mr. Katz called me, and to tell you the truth, I don't remember whether I got a hold of him or not. I think, in fact, I don't believe I did. But Mr. Katz said that he would get in touch with Mr. Harding. I think that's the way it went.

13 Q. Had you heard of Mr. Harding before that time?

1 A. I had heard the name mentioned, yes.

2 Q. In what connection had you heard that?

3 A. That he was one of the attorneys involved in the
4 case. *REDACTED* A. The association with Phil was about

5 Q. But you had not talked with him before that time?

6 A. No. *REDACTED* Since that time, I think I've seen a few

7 Q. And how about any other attorneys? *REDACTED*

8 A. *REDACTED* I have not even heard of any of the other names more
9 except Mr. Harding.

10 Q. I believe you mentioned Mr. Lynch earlier. *REDACTED*

11 A. I mentioned that. That happened this morning. I
12 called Ted Neils, and he said that he had had a conversation
13 with Mr. Lynch regarding the deposition today, and led me to
14 believe that the topic would be very narrow in scope. That's
15 about it. *REDACTED* I object to the question, lack of

16 Q. What is the scope of the deposition, to your under-
17 standing? *REDACTED* on as to Dr. Tai's veracity on the basis of two con-

18 A. Well, I felt that it was going to be directed at
19 the association with Phil Tai, and of course the subpoena is
20 more general than that. *REDACTED* But he mentioned that it would be
21 narrowed down to that relationship. *REDACTED*

22 Q. Do you consider yourself to be well acquainted with
23 Dr. Tai?

24 MR. HARDING: Objection to the question as leading.

25 MR. RIFKIN: *REDACTED* And the subject matter of the question has
26 been asked and answered. When he gave his deposition, I think

27 MR. HARDING: *REDACTED* It's vague and ambiguous; well acquainted
28 in what topics or what areas, socially, personally, *REDACTED*

1 professionally? Vague and indefinite.

2 THE WITNESS: Am I supposed to answer?

3 MR. WELSH: Yes, please.

4 THE WITNESS: A. The association with Phil was almost
5 entirely with respect to the Intel contract that we had for
6 the work-shops. Since that time, I think I've spoken to
7 Phil maybe two or three times on the phone just touching base
8 with what he was doing, what we were doing. But nothing more
9 than that.

10 Q. Are you aware of his reputation for honesty?

11 A. I have no reason to believe that he is either
12 honest or dishonest.

13 Q. Have you an opinion as to his veracity?

14 A. I would assume he is a man of integrity.

15 MR. HARDING: I object to the question, lack of foundation that this witness has a basis to have formulated
16 an opinion as to Dr. Tai's veracity on the basis of two contacts since 1974.

17 MR. WELSH: Q. Are you informed as to whether Mr.
18 Holt has had any contacts with Intel recently in connection
19 with his activities back in 1973 and 1974?

20 THE WITNESS: A. I have no information that he's done

21 that.

22 Q. Did he advise you of that document that he was requested to produce?

23 A. No, not really. When he gave his deposition, I think
24 he said something about trying to collect together documents
25 that pertain to that time. But he didn't advise me in the
26
27
28

1 pro or con sense.

2 Q. Did he inform you as to whether he made any contacts
3 with Intel in an attempt to get documents?

4 A. No, he didn't say anything of that sort.

5 Q. What is the frequency of your contact with Mr. Holt
6 today?

7 A. On a daily basis. He's Vice-President of Engineering,
8 and we have daily interface.

9 Q. Do you keep each other informed about your activities?

10 A. Not all of them. But generally, yes.

11 Q. Are you aware of any documents that are in your
12 files that relate to the courses that you gave for Intel?

13 A. I think I mentioned earlier that we may still have
14 some of the agreements in the files, maybe even a contract
15 for the course work that we gave on behalf of Intel. I've
16 not looked at them in years. But they still may be there.
17 They probably are.

18 Q. Do you know whether or are you informed as to whether
19 Mr. Holt is going to produce any documents?

20 MR. HARDING: Objection, hearsay.

21 THE WITNESS: I don't know.

22 MR. WELSH: Q. Did he mention that he was going to
23 make a search for documents?

24 THE WITNESS: A. No, he did not. But he has given a
25 brief deposition. I assume that he selected whatever informa-
26 tion he needed.

27 Q. Did he say anything about procuring documents for
28 his deposition this week?

1 MR. HARDING: Mr. Welsh, this certainly is a waste of
2 this witness's time on whatever Mr. Holt indicated that Mr.
3 Holt is or is not going to do on some future date.

4 MR. WELSH: Q. You may answer the question. ~~Answer?~~

5 THE WITNESS: A. Repeat it please. ~~Previous question.~~

6 (Whereupon the reporter read back the previous question.)

7 THE WITNESS: A. He didn't say anything about pro-
8 curing documents. He has mentioned that he has a box of docu-
9 ments that he's collected with respect to his deposition, and
10 he's got a box of them in his office I think.

11 MR. WELSH: Q. Have you seen it? ~~I am judging my~~

12 THE WITNESS: A. I've seen the box, but I haven't gone
13 through it. ~~we can make from this point forward witness to~~

14 Q. Did he tell you what documents were in the box? ~~it~~

15 MR. HARDING: Mr. Welsh, will you please explain how
16 this relates to the subject matter of the Tai affidavit?

17 MR. WELSH: Could I have the question? I'm not sure
18 the witness finished his answer. ~~correct is that whatever under-~~

19 MR. HARDING: I'm going to ask the witness to use his
20 own discretion as to whether the witness thinks this is within
21 the subject matter of the deposition, and respond accordingly.

22 THE WITNESS: Well, the deposition covers very broadly
23 some of these topics, and I would guess it's relevant. ~~currents~~

24 MR. HARDING: I would question whether documents in
25 Mr. Holt's possession have any --

26 MR. WELSH: Mr. Harding, you are not representing the
27 witness. He's answered your question. I think your conduct
28 is completely improper. ~~not as a lawyer and interpret a sub-~~

MR. HARDING: I think that's irrelevant, what that subpoena says. We have an agreement, and you are clearly exceeding the bounds of that agreement.

MR. WELSH: Could I have the question read back?

(Whereupon the reporter read back the previous question.)

THE WITNESS: A. He didn't say what specifically was in the box. The documents that he would have --

MR. HARDING: I object to any further testimony.

MR. WELSH: Will you please let the witness answer the question?

you MR. HARDING: No, sir, I will not. I am lodging my objection, because the witness is purely speculating at this point. I move to strike from this point forward whatever he says. I appologize to the witness for cutting him off, but I think when he disclaims any first hand knowledge to preface his answer, that he's going to speculate.

MR. WELSH: Q. Will you complete your answer please?

box THE WITNESS: A. My only comment is that whatever documents he has in the box would be our company files. So those would be the only documents which might relate. However, he worked on the Ramtek job, so even though those are in our files, he has knowledge of those specifically where I do not.

Q. Do I understand correctly then that those documents are documents which you feel come within the document request that was attached to the subpoena?

MR. HARDING: The Objection, Mr. Welsh, it may be cover

MR. RIFKIN: I lodge my objection, Mr. Welsh. You

can't ask this witness to act as a lawyer and interpret a sub-

1 pena.

2 WITNESS: MR. HARDING: And on documents that he's testified he
3 has no first hand knowledge on and only speculates as to what
4 may be in a given box. If the line of questions continues,
5 we have to suspend.

6 MR. KATZ: Could you read the question and answer
7 back?

8 (Whereupon the reporter read back the previous question.)

9 THE WITNESS: A. Some of them no doubt do.

10 and MR. WELSH: Q. And they are company documents which
11 you would have access to; is that correct?

12 THE WITNESS: A. Yes.

13 MR. HARDING: At this point I'm going to voir dire
14 the witness, which is my right.

15 Mr. Lemas, did you not say that you didn't know what
16 documents were in the box?

17 THE WITNESS: I don't know specifically what is in the
18 box. You submit to him to see whether they pertain to a
19 particular.

20 MR. HARDING: Then you don't know whether those documents
21 come within the subpoena, do you, if you don't know the
22 identity of the documents?

23 THE WITNESS: I don't know.

24 MR. HARDING: Thank you.

25 MR. WELSH: Q. Would you like to finish your answer?

26 THE WITNESS: A. The documents have to do with jobs
27 that we did. To that extent, I assume that they may be covered
under the subpoena. I have not had time -- I've been out of
town. I have not had time to go through such documents.

1 Q. I would like to request that you do make the docu-
2 ment search that was the subject of the subpoena and the attach-
3 ment to it, and that we be permitted to inspect those documents.

4 MR. RIFKIN: Mr. Lemas, I would respond to Mr. Welsh's
5 request by telling you one more time that there was an agree-
6 ment at the time this deposition was permitted to go forward
7 that the deposition would be very specifically limited to the
8 documents produced and the subject matters inquired in it, and
9 that limitation has a severe effect on the scope of the subpoena;
10 and that any documents that you choose to produce in response
11 to that subpoena be produced as provided through some attorney
12 representing either your company or Honeywell so that that
13 lawyer may discuss the appropriate scope of the production
14 prior to the documents being turned over to Mr. Welsh.

15 MR. HARDING: And if I may add my two bits, I suggest
16 that the attorney or whoever you choose will be glad to pay
17 our pro rata portion of his fees in order to review any docu-
18 ments you submit to him to see whether they pertain to a re-
19 lationship with Dr. Tai and you and Ray Holt and/or your
20 company. And only documents that do pertain to your relation-
21 ship to Dr. Tai be produced.

22 THE WITNESS: Well, the subpoena I received was more
23 general than that. I was only informed that the deposition
24 today would probably be much narrower in scope. That's why I
25 concluded it wouldn't be inappropriate for me not to bring
26 them. I haven't had time to review them. But quite frankly,
27 I don't know whether this limitation is official or not. I
28 really don't at this stage.

MR. RIFKIN: That's the purpose of my request that you submit whatever you want or feel to legal counsel, and let your legal counsel determine whether it's appropriate or inappropriate rather than the parties here subjecting you to any more of this nonsense.

THE WITNESS: Well, I think I should check with the attorney to make sure -- again I want to cooperate with this deposition, and I have no reason not to.

MR. WELSH: Q. Are any of those documents secret to your knowledge or confidential?

MR. HARDING: Objection, lack of foundation. The witness has already disclaimed any personal knowledge of what documents are in the box. So therefore he can't know whether they are secret. A. No. As a matter of fact, to me

THE WITNESS: Officially the documents are no longer
our property. They are owned by Synertek, our parent company,
and that's owned by Honeywell. Quite frankly, it's something
that they have to make a judgment on as to their proprietary
nature.

MR. WELSH: Q. Do you know the number of the
Honeywell attorney, Mr. Neils?

THE WITNESS: *rod. D. A. T. Yes, I do. Holt had discussions with*

Q. Could you tell us what it is?

Q. Could you name any other person who has a cause

A. I gave that number to a secretary. I can get the number in a matter of minutes. But I'm sorry, I didn't bring it with me. I meant to.

as MR. WELSH: Perhaps when we have a break you can call
your office.

1 (Whereupon a short recess was taken.)

2 THE WITNESS: . . . I've got that number for you: Area
3 code 612-870-2892.

4 MR. RIFKIN: . . . The fellow's name is Ted Neils?

5 THE WITNESS: Ted Neils.

6 MR. WELSH: . . . Q. When you met with Dr. Tai during the
7 your courses, what subjects did you discuss with him?

8 THE WITNESS: . . . A. Mostly having to do with contractual
9 items or conducting the courses and fees, you know, attendance,
10 things of that sort.

11 Q. Did you discuss software matters versus hardware
12 matters? Is that correct?

13 MR. RIFKIN: Objection, the question is leading.

14 THE WITNESS: . . . A. No. As a matter of fact, to the
15 best of my recollection, we seldom discussed things that had
16 to do with, you know, technical applications of microprocessors,
17 but mostly business aspects of conducting the courses.

18 MR. WELSH: . . . Q. When you say mostly, what else did
19 you discuss? What sort of matter had any relation-

20 THE WITNESS: . . . A. I don't remember discussing anything
21 else besides that. Q. Can you answer the question?

22 Q. Were you present when Mr. Holt had discussions with

23 Dr. Tai?

24 A. Ray Holt was often also there, but he might have
25 met with Phil Tai when I wasn't there.

26 Q. When you were there, did he discuss subjects such
27 as hardware?

28 A. I don't remember anything specific to be honest with

1 you with respect to the particulars of discussions other than
2 general contractual.

3 Q. Did you have different functions in the course, for example, dealing with software versus Mr. Holt's dealing
4 with hardware?

5 A. Yes, we did. The courses were split between lecture
6 and what we call lab. Ray would handle the lab, and I would
7 handle the lecture, and my emphasis was mainly on the software,
8 and Ray's was mainly on use of the intelligent equipment and
9 hardware.

10 Q. So his function dealt more with applications of
11 microprocessors; is that correct?

12 MR. RIFKIN: The question is leading and no foundation
13 for that question, and Mr. Harding has an objection.

14 MR. HARDING: I want to know if once again you are
15 finished with your interrogation as to the subject matter
16 within the Tai affidavit. If we're back to the earlier
17 hiatus concerning the subject matter taught by the courses
18 without a showing that that subject matter had any relation-
19 ship whatsoever to Dr. Tain -- mainly outside the scope of our
20

21 MR. WELSH: Q. Could you answer the question?

22 MR. HARDING: At this point I want to voir dire the
23 witness and ask what relationship -- er, even I'll let him

24 MR. KATZ: There is an outstanding question on
25 the floor.

26 MR. HARDING: I think I'm perfectly able to voir dire
27 to establish a foundation to see whether he's entitled to
answer that question. What relationship, if any, did Dr. Tai

1 have in deciding what roles you and Mr. Holt would play in
2 your courses?

3 THE WITNESS: None specifically. The course material
4 had to get covered, and we split the material up as best our
5 backgrounds were able to cover them, and mine is software and
6 Ray's is hardware.

7 MR. HARDING: Did you do that or Dr. Tai?

8 THE WITNESS: Ray Holt and I decided who would do what.

9 MR. HARDING: Thank you.

10 MR. WELSH: Could we have the question read back, d
11 the outstanding question.

12 (Whereupon the reporter read back the previous question.)

13 THE WITNESS: I wouldn't say that's correct at wa-
14 all. In fact, I don't know of any work so as to

15 MR. HARDING: Mr. Welsh, to the extent that you have
16 not established a relationship with Dr. Tai and want to get
17 back into it, you are forcing me to invoke Rule 30 D, and I
18 have a suspicion that is your intent, to go as far as possible
19 so you can allege that the deposition was terminated by de-
20 fendants. But I think it's clearly outside the scope of our
21 agreement, and I've requested repeatedly that you show a re-
22 lationship with Dr. Tai in these questions, and you refuse to
23 do so. If you will show a relationship, then I'll let him
24 answer.

25 MR. WELSH: Mr. Harding and Mr. Rifkin, I believe
26 there are certain areas of inquiry here that are relevant to
27 the Tai affidavit to the extent that it relates to derivation
28 of the invention here to the transfer of information from --

1 MR. RIFKIN: Excuse me, if you are going to go into
2 this in any detail, I'd rather the witness not hear it. I'm
3 perfectly willing to let you finish, and I appologize for
4 interrupting, but I'd rather the witness not hear it if you
5 are going to be specific.

6 MR. WELSH: I will agree to that. It will just take
7 a few minutes.

8 (Whereupon the witness left the deposition room.)

9 MR. WELSH: There are areas here of inquiry that
10 would appear to be within the knowledge of this witness and
11 Mr. Holt that relate directly to the possibility or actual
12 transfer of information to or from Holt and Atari, and in-
13 formation that would indicate that the Ramtek work by Holt was
14 in fact, done with knowledge of Frederiksen work so as to
15 negative any independence of their development. It's our view
16 that this type of information is something that the patent
17 office examiner ought to have in his deliberations in the re-
18 issue application. I think the court should have it too.

19 I'm asking you to agree that we may inquire of this wit-
20 ness as well as Mr. Holt of any knowledge of Atari's work,
21 acquaintance with Atari people, also the AMOA show in 1974,
22 the Asilomar conference in the spring of 1975. I'm asking that
23 you agree that we may inquire of this witness as well as Mr.
24 Holt into these matters.

25 MR. RIFKIN: Well, I must say that I'm a little
26 shocked by your request. I thought you were going to ask us
27 for clarification of our position as far as this witness and
28 Ray Holt in the course work. All of a sudden, I find that a

1 brand new subject matter has been brought to the fore. Now
2 suddenly we have to deal with Atari, a subject which clearly
3 is not mentioned at all anywhere in the Tai affidavit. You
4 must be trying to create a record and an offer of what you
5 would prove if you could. What you can prove I think is
6 significantly different. I have no response except to say that
7 I'm flabbergasted at your request. Discovery is closed, as
8 you know, and if you thought there was a derivation, you've had
9 almost two years to establish that. It is your burden, and
10 I don't think we have interfered with your discovery at all as
11 far as Atari is concerned, and I don't know how to respond to
12 your request except to say that I think it's highly improper.

13 MR. HARDING: I will respond by saying, Mr. Welsh, it
14 was our understanding of the agreement that the operative facts
15 of the Tai affidavit included the derivation issue from the
16 Milwaukee Coin work through Dr. Tai. Now, if you cannot show
17 that that information was presented to Mr. Lemas, then there
18 can be no connection between Mr. Lemas and either Ramtek or
19 Atari. But if you can show the connection between knowledge of
20 the Milwaukee work and Nutting and Mr. Lemas, then I would
21 have no objection to your pursuing it as to his dissemination
22 or his use of it at Ramtek or Atari. But as of yet, you have
23 not been able to show a connection between Milwaukee, Dr. Tai
24 and this witness.

25 MR. RIFKIN: Indeed, you've shown just the opposite.
26 This witness has disclaimed any knowledge of those subjects.

27 MR. HARDING: So to the extent that your request is
28 outstanding, I think I am perfectly agreeable as long as you

1 take the foundation of showing the first step in the derivation,
2 the first step in the chain, the communication from
3 Milwaukee Coin to Dr. Tai to the witness.

4 MR. WELSH: The subject matter which the Tai affidavit
5 relates to is not only derivation from the Frederiksen work,
6 but also lack of independent development so far as Ramtek and
7 Atari and Frederiksen are concerned. The examiner considered
8 that the three represented concurrent independent developments,
9 and any lack of independence between Atari and Ramtek is re-
10 lative to the subject matter of the Tai affidavit to that
11 extent.

12 MR. HARDING: Please point out to me in the Tai affidavit --
13 please point out the dependence of either Ramtek
14 or Atari on each other as addressed to in the Tai affidavit.

15 MR. WELSH: I'm asking you to let me inquire into
16 that. I say that the affidavit is relevant to the issue of
17 independence which is before the examiner, and I'm asking you
18 to let me inquire of this man and Mr. Holt into that matter.

19 MR. HARDING: Are you admitting then that there is no
20 derivation into any information to this witness of the
21 Milwaukee work?

22 MR. WELSH: No.

23 MR. HARDING: Will you establish that then please, and
24 then we'll address your question. If you will merely establish
25 some knowledge --

26 MR. WELSH: It's completely independent of derivation
27 from Frederiksen.

28 MR. HARDING: Then you admit that derivation plays no

1 role.

2 MR. WELSH: I am not going to admit anything to you.

3 MR. RIFKIN: I don't think we're in a position to give
4 you an answer as to Holt or this witness until we find out
5 what you are asking for.

6 MR. HARDING: We came out to give you discovery on
7 whether there is any connection whatsoever between this witness
8 and the work by Mr. Nutting and Mr. Frederiksen in Milwaukee
9 on computer controller pin ball, especially by way of Dr. Tai.

10 MR. RIFKIN: I would make one remark in conclusion.

11 The only thing about independent conception that I've seen is
12 the information that was in Bally's own files that was not
13 submitted to the patent office that was given to me yesterday
14 in Chicago where your Nevada Research Center indicated that
15 Bally had specific knowledge that Ramtek had their own in-
16 dependent development, and that information wasn't presented
17 to the patent office. So if there is any derivation question
18 or lack of derivation, it's completely on the other foot.

19 MR. WELSH: I am not aware of any documents that
20 show what you just stated, Mr. Rifkin. Therefore, I'd have
21 to deny what you say is true. I will say that your interrup-
22 tion of the examination and making objections and all have
23 prevented our obtaining information from this witness. I
24 think that if we are not permitted to inquire into these other
25 matters, that's further impeding our effort to get all the
26 facts before the patent office.

27 MR. HARDING: Mr. Welsh, first I disagree that there
28 was any obstruction to any subject matter that you came out

1 here to obtain by way of our agreement. In fact, we were
2 ultra generate in allowing you to go outside our agreement to
3 get at discovery not contemplated.

4 Now, we've requested repeatedly for you to get back to
5 the subject matter of derivation, and there have been very
6 few questions on that. Now, will you indicate that you are
7 finished with the derivation issue, and we'll address the
8 subject matter of Atari and Ramtek being independent or de-
9 pending developments after you say that you are finished with
10 the derivation issue.

11 MR. WELSH: I have some more questions on the derivation issue.
12 I might add that we haven't had any docu-
13 ments that we could use to refresh the recollection of this
14 witness, which has further impeded the examination.

15 MR. HARDING: Then let's get on with the deposition
16 within the agreement, and you make your request as to this
17 other topic outside of our agreement when we finish with
18 the deposition on derivation.

19 MR. WELSH: Do you want to get the witness?

20 (A short recess was taken.)

21 MR. WELSH: Q. Have you ever of Jeffry Frederiksen?

22 THE WITNESS: A. No, I have not.

23 Q. Have you ever heard of a company in Milwaukee called
24 Milwaukee Coin Industries?

25 A. Is that on the subpoena? Is you that's the only

26 time I've ever seen it. But there was a company on there
27 that I knew nothing about.

28 Q. Is this the company?

1 A. I've never heard of that company.
2 Q. You've never heard of Dave Nutting and Associates?

3 A. Dave Nutting I've heard of. We had some dealings
4 with Dave Nutting, and to tell you the truth, I don't remember
5 the detail of that. I think we sold them some of our micro-
6 processor products.

7 Q. When you say we, who do you mean?

8 A. Microcomputer Associates. I think we sold them
9 some of our products. I remember seeing that name on some
10 invoices at one point in time.

11 Q. What is your recollection as to when that occurred?

12 A. I couldn't give you the specific time. I'm sorry
13 I can't remember.

14 Q. Have you ever heard of a company called MCI in
15 Milwaukee?

16 A. No, I don't remember it at all. Now, I should say
17 that I was not aware of every company that we sold some of
18 our products to. It could be that we shipped them some pro-
19 ducts. I don't have any recollection of that company.

20 Q. Referring to Dave Nutting and Associates, do you
21 know where they were located when you had your dealings with
22 them?

23 A. No, I don't remember now, nor do I remember anything
24 that was, you know, of necessity to know, where they were.
25 But I remember the name.

26 Q. Were you ever present during any discussion with
27 Dr. Tai regarding the use of a microprocessor and multiplexing
28 lamps, incandescent lamps?

1 A. No.

2 Q. Were you ever present when Dr. Tai discussed the
3 application of microprocessing to pin ball machines?

4 A. Not that I can remember.

5 Q. Do you have any knowledge as to whether Mr. Holt
6 and Dr. Tai ever discussed proposed applications of Intel
7 microprocessors that Dr. Tai had learned about?

8 A. No, I'm not aware of that.

9 Q. Were you ever present when Dr. Tai discussed visits
10 to customers for Intel microprocessors?

11 A. I don't remember anything specific about his dis-
12 cussing business with customers. Now, again there was a
13 period of time, there where we were meeting with him. If he
14 did mention something like that, all I can say at this time in
15 all honesty I don't remember any particulars of any such dis-
16 cussion.

17 Q. Do you remember any such discussions generally?

18 A. No, I do not.

19 Q. Do you have any knowledge of whether during the
20 '73-'74 time frame Intel had any policy with respect to main-
21 taining applications of microprocessors by its customers on a
22 confidential basis?

23 A. Well, first, generally speaking, we would not be
24 given that kind of information. It would not surprise me if
25 they had a policy having to do with the proprietary nature of
26 applications. This is very typical in the industry. But I
27 never remember having any problem with being given information
28 or being told that I shouldn't discuss anything that I would

1 know in a general way. But just pure business ethics, I
2 would know not to discuss things that I thought might be pro-
3 prietary. But I don't remember having specific information
4 about any such application.

5 Q. 6 Did you ever take any notes during any discussions
6 with Dr. Tai?

7 A. 8 I might have taken notes, but again most of the
8 discussions had to do with course schedules and who might be
9 in the courses, the number of people. I never kept any of
10 those notes.

11 Q. 10 Did you have a practice of making notes?

12 A. 11 Only if I couldn't remember, if they got so detailed
13 that I couldn't remember. Then I'll scratch something out as
14 just a reminder. My notes generally tend to be just temporary.

15 Q. 12 Do you know whether Mr. Holt ever took notes during
16 discussions with Dr. Tai?

17 A. 13 I don't know, I don't remember.

18 Q. 14 Do you know whether he had a practice of doing
19 that?

20 A. 15 I don't think so.

21 Q. 16 Did you say that if you had taken notes, they wouldn't
22 be in existence?

23 A. 17 I'm sure they wouldn't.

24 MR. WELSH: 18 Except for the absence of documents with
25 which to examine this witness to perhaps refresh his recol-
26 lection, that completes my examination with respect to the
27 Tai affidavit. However, I feel that we are entitled to docu-
28 ments and we may have to return to examine Mr. Lemas depending

1 on what documents we're able to see.

2 THE WITNESS: Can I make a suggestion? Here again,
3 we want to cooperate fully. Ray has given a deposition before,
4 and I think he did collect the documents. He's got a box.
5 I'm sure he'll have no problem in letting you examine those.
6 He is closer to that then I am. I would have to scrounge
7 through there. If you asked a question whether there was or
8 wasn't a document, I'd have to browse through it. I would
9 like to suggest that those documents be made available. I'm
10 assuming that Ted Neils knows that those documents will be
11 made available. I will advise him of that, but could that be
12 done when Ray Holt gives his deposition? Quite frankly, I
13 don't have much at all to offer in this regard. I am not
14 trying to hide anything. I'm just saying that for me to
15 get a hold of those same documents that Ray Holt has, I don't
16 think that will add anything to it as opposed to his providing
17 that for you.

18 MR. WELSH: I would just have to see the documents,
19 Mr. Lemas, to be able to respond.

20 MR. RIFKIN: Why don't we leave it at that. If these
21 gentlemen want to come back, they are going to have to get an
22 order from a judge. If they get it, they will come back. If
23 they don't, they won't be troubling you again.

24 THE WITNESS: Fine.

25 EXAMINATION BY MR. HARDING

26 MR. HARDING: Q Mr. Lemas, you testified on direct
27 something about second source agreements. Do you recall that
28 testimony?

1 THE WITNESS: A. Yes, I do.

2 Q. Are those second source agreements between Rockwell
3 and Synertek or between MOS Technology and the various companies?

4 A. My understanding is that there are second source
5 agreements between Synertek and MOS Technology. When I men-
6 tioned before about second source agreements between Synertek
7 and Rockwell, I have no knowledge of that. I just know that
8 there are second source agreements between Synertek and MOS
9 Technology, and Rockwell and MOS Technology. I correct myself
10 on that.

11 Q. Has Rockwell in any way had any effect on your
12 testimony here today?

13 A. Absolutely not.

14 MR. HARDING: I don't have any further questions.

15 MR. RIFKIN: I have no questions for the witness.

16 FURTHER EXAMINATION BY MR. WELSH

17 MR. WELSH: Q. Does Synertek have any business
18 relationship with Atari?

19 THE WITNESS: A. Yes, they do.

20 Q. What is that?

21 MR. HARDING: I object to that question, Mr. Welsh,
22 and it is clearly outside the scope of this deposition.

23 THE WITNESS: I think it's common knowledge that Atari
24 is one of their customers, but I don't think I should go beyond
25 that without having someone advise me on that.

26 MR. WELSH: Q. I turn now to the question as to
27 when did you realize that Synertek did not have an agreement
28 with Rockwell?

1 THE WITNESS: A. Well, after I had made the statement,
2 I thought about what I had said. It was a second source between
3 Synertek and Rockwell. I didn't think it was that important
4 to come back and correct it. But I'm glad it was brought up
5 again, because that's not quite true. Now, outside the door
6 here, I guess Mr. Harding said something about is it true
7 that they do have -- and I said "No, as a matter of fact, I
8 made a mistake there."

9 Q. That was during a recess that Mr. Harding said
10 that?

11 A. Yes, he casually mentioned that.

12 MR. RIFKIN: While you were in the enclosed room in
13 the meeting, we were sitting outside in the reception area.

14 MR. WELSH: Now, Mr. Harding, I return to my request
15 as to whether you and Mr. Rifkin will agree that we may in-
16 quire about the subjects that were discussed at the absence of
17 the witness?

18 MR. RIFKIN: Mr. Welsh, you indicated that we were
19 through questioning this witness on the subjects that you've
20 questioned him on so far, whatever they may be. I'm prepared
21 to talk about this witness signing and adjourning this deposi-
22 tion. Whether you want to call it completed or whether you
23 want to take the position that it's not complete, that's your
24 position to take, and I'll be happy off the record to discuss
25 any subjects you like. But I don't feel that I will address
26 any other topics on the record at this time.

27 MR. WELSH: Including those that we discussed in
28 the absence of the witness?

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MR. RIFKIN: Right. They are on the record. You have our position, and you can make what you will of that in the patent office. But I'm not going to provide you with more fodder for what I consider to be an inappropriate argument before the patent office.

MR. HARDING: And before Rockwell and Gottlieb will even discuss the matter, we want you to agree that that is outside the scope of this deposition and our agreement as to the deposition of this witness.

MR. WELSH: I do not agree with that. I think the issue of independence of very closely related to the subject matter of the Tai affidavit.

MR. RIFKIN: For Mr. Lemas' benefit, can we terminate this deposition in one fashion or another.

MR. WELSH: I indicated that we may have to come back. So I don't want to terminate the deposition.

MR. RIFKIN: All right. Terminate it in such a fashion that you feel you must.

MR. WELSH: We can have the transcript prepared and have the witness read and sign it.

MR. RIFKIN: Before any Notary.

MR. WELSH: Before any Notary. I would agree to that.

MR. HARDING: As to the derivation issue, it's terminated.

MR. WELSH: No, because we haven't seen the documents.

MR. RIFKIN: Well, it's 1:04 P.M. If you have any more questions on that issue, I would suggest you add them because we have until 5:00.

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MR. WELSH: Well, if you are going to invoke 30 D, then the deposition is adjourned.

MR. RIFKIN: At your instance, not at ours.

MR. WELSH: It's adjourned because you've indicated that you will invoke Rule 30 D if we go beyond the questioning that we've done.

MR. HARDING: We have said that we'll allow complete liberal examination of this witness as to the issue of derivation from the Milwaukee computer pin ball work to Dr. Tai, which is the operative facts of the Tai affidavit, and which is the subject matter of our agreement. If you have no further questions on that issue of derivation, the deposition, according to our agreement, is apparently terminated.

MR. WELSH: No, because we haven't seen the documents. There may be more questions once we see the documents. But I'm willing to have the transcript prepared and the witness sign it before we return.

MR. RIFKIN: We agree with that. We're willing to have the transcript prepared and the witness sign it, and we do not agree that you have a right to return, but that's something you can take up with the Chicago court. We will respond appropriately.

Manuel Raymond Lemas